IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Hindustan Zinc Limited v. Pradeep Siroya & Anr.

(1)S.B.CIVIL WRIT PETITION NO.1380/1995

Pradeep Siroya v. Hindustan Zinc Limited & Anr.

(2)S.B.CIVIL WRIT PETITION NO.727/1996

Petitions under Article 226
of the Constitution of India.

Date of Order :: 19th March, 2007

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sanjeet Purohit for Mr. Manish Sisodia, for the petitioner employer.
Mr. M.Mridul Senior Advocate with Mr. P.S.Chundawat, for the respondent workman.
(SBCivil Writ Petition No.1380/1995)

Mr. M.Mridul Senior Advocate with Mr. P.S.Chundawat, for the petitioner workman.
Mr. Sanjeet Purohit for Mr. Manish Sisodia, for the respondent employer.
(SBCivil Writ Petition No.727/1996)

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BY THE COURT :

These two petitions for writ are preferred to question validity, propriety and correctness of the award dated 14.12.1994 passed by Labour Court, Udaipur answering the reference made to it by the appropriate government in following terms:-

> "Whether the action of the Management, Rajpura Dariba Mines, M/s. Hindustan Zinc Ltd., in terminating the services of Shri Pradeep Siroya son of Shri Sardar Singh, Senior Assistant, Employee No.32168 w.e.f. 19.1.1991 is justified and legal? If not, to what relief the workman is entitled?

Before passing the award impugned the Labour Court vide order dated 5.12.1994 held the domestic inquiry fair and in accordance with law. The Labour Court also held that Shri Pradeep Siroya (hereinafter referred to as "the workman") was rightly found guilty for the misconduct but held the penalty of discharge from service disproportionate to the delinquency proved. Accordingly, while exercising powers under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947") the punishment of discharge was substituted by penalty of withholding of two annual grade increments with cumulative effect. The workman was also declared entitled for 50% of the back wages and full wages for the period he remained under suspension. Challenge is given to the award by the employer as well as by the workman. By the workman challenge is also given to the order dated 5.12.1994 holding the domestic inquiry fair.

The factual matrix giving rise to the industrial dispute as above is that the Manager

(Goods), Rajpura Dariba Mines, Hindustan Zinc Ltd. issued and served a memorandum dated 16.4.1990 seeking explanation from the workman for certain allegations of misconduct relating to his misbehaviour with higher officials. It appears that the workman under his letter dated 22.4.1990 accepted the wrong done by him, therefore, the Manager (Goods) dropped the proposed disciplinary action with warning to the workman. Some uncalled for incidents again took place on 7.7.1990 and 22.7.1990 and for that the disciplinary authority served a charge sheet dated 23.7.1990. The charge sheet was containing definite charges with statement of facts on which charges were founded. The charges of misconduct alleged and the statement of allegation under the charge sheet dated 23.7.1990 reads as follows:-

> "a)Use of abusive language for superior employees
>
> b)Ritious and disorderly behaviour with your colleagues in the office during office hours and thereby committing acts subversive of discipline.
>
> c)Assaulting and threatening superiors employee of the Company within the mine premises.
>
> d)Wilful violation of Standing Orders.
>
> The above charges are based on the following allegations:

It has been reported in writing by your colleagues that you are in habit of exhibiting disorderly behaviour and using abusive language in the office during the office hours for superiors.

You are also in habit of talking about castism and other unwanted affairs in the office. Whenever your colleagues advise you to stop such action you become angry and start threatening to them.

On 7.7.1990 you were on duty. At about 3.30 p.m. you were using abusive language for G.M. While doing so, your other colleagues like S/Shri Pradeep Kumar Yagnik, (Sr.Assistant, E.No.32289,) Shyam Sunder Paliwal (Sr.Assistant. E.No.32111) & Dinesh Chandra Daglia (Sr.Assistant, E.No.32315) advised you to stop such use of abusive language for superiors. Instead of taking advise of your colleagues in good spirit and used the following language before them.

"मैं अशोक अग्रवाल और आर.सी. भटनागर के पाले हुए कुत्तों को अच्छी तरह जानता हूँ और यहाँ बैठने वाले उन कुत्तों को मैं देख लूंगा। ये सात नम्बर का जूता देखा कि नहीं"

Thereafter, you took a paper weight in your one hand and single punch in the other hand and rushed to beat them.

Thereafter, these employees submitted a written complaint against you for necessary action. Since, these allegations were of serious nature, the undersigned decided to meet with you and enquire about the incident.

With this and in view, the undersigned visited personally the office of Shri P.L.Gehlot, Manager (Materials) (under whom you are working) at about 4.15 PM on 22.7.1990. I called Shri R.C.Bhatnagar, Manager (Materials) and you to enquire into the incident on 7.7.1990. While enquiring into the incident you started giving irrelevant reply and not talking to the points. As a result, I asked you to go to your seat. After going to your seat, you started threatening your other colleagues who had given the written complaints dated 9.7.1990. After the order of suspension was signed by the undersigned and handed over to Shri R.C.Bhatnagar, Manager (Materials) for serving the same to you.

It was reported that you refused to accept the order No.HZ L/(S&P)/Pers/90/dated 22.7.1990 when you were asked to receive it by Shri V.S.Jayavalsan. Shri Jayavalsan came to the chamber of Shri Gehlot and returned the order undelivered to Shri Gehlot in the presence of Shri Bhatnagar and the undersigned. Shri Gehlot called you in his chamber and advised you to receive the letter. You again refused to accept the letter and told that all the problems were created by Shri R.C.Bhatnagar, Manager (Materials). Thereafter, I again advised you to take the delivery of said order, but you became suddenly violent and attacked Shri Bhatnagar with a blow. When Shri Bhatnagar tried to save himself, you hit him on shoulder and threatened him and his family members of dire consequences.

> Thus, you are guilty of committing the acts of misconduct as mentioned above. This amounts to acts of misconduct in accordance with Certified Standing Orders under Clause No.18(18), (22), (28) & (36)."

An officer to inquire into the charges was appointed by the disciplinary authority on 18.8.1990 as the explanation forwarded by the workman was not found satisfactory. On 21.12.1990 the proceedings of inquiry stood concluded during which the inquiry officer examined testimony of prosecution witnesses viz. M/s Shyam Sunder Paliwal, Dinesh Daglia, Pradeep Yagnik, Jayavalsan, R.C.Bhatnagar, H.B.Shivanan Jappa and P.L.Gehlot. Statements of M/s Ramlal, P.K.Bhardwaj and Mukhtiar Singh Maan were also recorded in defence. The request of the workman to treat his written explanation to charge sheet as his statement was also accepted. Pertinent to note here that the workman after closing of prosecution evidence submitted a list containing names of 18 persons to whom he wanted to produce as witness in defence but out of those only three persons came forward to see witness box.

The inquiry officer submitted the report of inquiry to the disciplinary authority on 17.1.1991 from perusal of that it reveals that not only the prosecution witnesses but even the defence witness

Shri P.K.Bhardwaj to great extent supported the charges alleged. Worthwhile to be noticed that a photocopy of the entire record of the domestic inquiry was produced before the Labour Court by the employer on 31.8.2003, as such the same is also available for examination by this Court alongwith the record of the Labour Court that was called for by the order dated 17.5.1995.

From examination of the record of inquiry it reveals that MW-1 Shri Shyam Sunder Paliwal on 9.9.1990 stated that on 7.7.1990 when he was discussing about water supply problem with Mr. Dinesh Daglia and Pradeep Yagnik the workman by using abusive language made certain comments about General Manager Shri Ashok Agarwal. On objection the workman misbehaved with him by saying that he know all the pat dogs of Mr. Agarwal and Mr. Bhatnagar. MW-1 Shri Shyam Sunder further stated that the workman tried to hurt him with a paper weight. The statement given by Shri Shyam Sunder was read before the workman and he was allowed to cross examine the witness. In cross examination also Shri Shyam Sunder maintained whatever he stated in chief. Shri Dinesh Daglia and Shri Pradeep Yagnik also narrated the incident that took place on 7.7.1990. According to them too on 7.7.1990 the workman abused higher officers and tried to hurt Shri Shyam Sunder. Shri Jayavalsan, a peon, in his statements stated about non acceptance of certain

documents by the workman when he tried to serve the same upon him under the instructions of the higher officials.

Shri R.C.Bhatnagar and Shri P.L.Gehlot in detail narrated the incident that took place on 22.7.1990. Both the persons named above stated that the workman abused Shri R.C.Bhatnagar and also assaulted him. The most important aspect of the matter is that Shri Shivanan Jappa, the disciplinary authority, who has passed the order of dismissal, also appeared before the inquiry officer and was testified. Shri Shivanan Jappa in quite unambiguous terms stated that on 22.7.1990 the workman assaulted Shri R.C.Bhatnagar physically.

The defence witnesses Ramlal and Mukhtiar Singh Maan in their statements have not said anything much relevant to the charges alleged. Shri P.K.Bhardwaj (DW-2) accepted that hot discussion took place between the workman and other three employees viz. Shri Shyam Sunder Paliwal, Pradeep Yagnik and Dinesh Daglia on 7.7.1990.

The workman too in his statements accepted the happening of incidents on 7.7.1990 and 22.7.1990, but denied that he used abusive language and made assault on Shri R.C.Bhatnagar. He also stated about his depressed mental status.

The inquiry officer after considering the evidence available on record including the statements of M/s Shri Shyam Sunder, Dinesh Daglia and Pradeep Yagnik held the workman guilty for the charges “a” and “b”. The charge “c” was found proved against the workman on the basis of the statements given by M/s R.C.Bhatnagar, P.L.Gehlot and Shivanan Jappa. The disciplinary authority by accepting the findings given by the inquiry officer passed an order dated 19.1.1991 discharging the workman from service and the same was also affirmed by the appellate authority.

Aggrieved by the order of discharge the workman raised an industrial dispute that resulted into the award impugned dated 14.12.1994, hence these petitions for writ were preferred.

On behalf of the workman (SBCWP No.727/1996) validity of the award impugned is questioned on following grounds:-

(1)the order of punishment is invalid having been passed by a biased person i.e. Shri Shivanan Jappa who appeared before the inquiry officer as an eye witness and also acted as disciplinary authority;

(2)being an order without having reasons in support of the findings, the order of disciplinary authority is bad in eye of law; and

(3)a copy of the preliminary inquiry report was not supplied to the petitioner despite demand and that vitiates the entire inquiry being in violation of principles of natural justice.

According to counsel for the employer (SBCWP No.1380/1995) the award impugned is bad to the extent it modifies the punishment imposed by the disciplinary authority as the jurisdiction under Section 11-A of the Act of 1947 could be exercised by the Labour Court only if the discharge or dismissal is not justified and not on compassionate or sympathetic consideration.

Heard counsel for the parties and examined the record available.

The essential and integral part of the principles of natural justice is that the decision should be made free from bias or impartiality. Where the decision maker is desirous of a specific result of an inquiry then the bias is manifest and a real likelihood. The argument raised by counsel for the petitioner that in the instant matter the decision maker himself participated in inquiry as witness that proves bias on its face. The argument appears to be very attractive but that cannot be accepted without getting satisfied about the real likelihood of bias. This also cannot be determined on surmises or

conjectures. The test to adjudge bias is that what a reasonable man would believe and perceive in given facts about real likelihood of bias. To determine the issue of bias the circumstances of the case, nature of the inquiry and the subject matter that is being dealt with is required to be examined.

In the present case, the charges pertain to volatile behaviour of the workman with his colleagues and senior officers of the establishment. All the witnesses produced by the prosecution in quite unambiguous terms stated that on 7.7.1990 the workman used abusive language for higher officials and for his colleagues, he also tried to hurt Shri Shyam Sunder Paliwal by the paper weight. With regard to incident dated 22.7.1990 Shri R.C.Bhatnagar and Shri P.L.Gehlot have stated without any hitch that the workman abused them and also assaulted Shri R.C.Bhatnagar. From reading of the statements which are part of the record, I am also satisfied that the workman used most abusive and derogative language for his senior officers and other colleagues. It is true that Shri Shivanan Jappa despite being disciplinary authority appeared as a witness before the inquiry officer and supported the case of prosecution but from reading of his statement it appears that he was trying to pacify the workman on the day concerned. From his statements it nowhere reflects that he was having any prejudice and bias towards the workman. Irrespective of that

even, if, the statements of Shri Shivanan Jappa be ignored, a reasonable person could have reached at the conclusion that the workman was guilty of a grave misconduct. It is pertinent to be noticed that even the defence witness Shri P.K.Bhardwaj to great extent supported the story of prosecution. The two other defence witnesses viz. Mukhtiar Singh Maan and Ramlal have not said anything that may be relevant to prove innocence of the workman in any manner. The totality of the facts and circumstances of the case does not prove any likelihood of bias in present matters.

Beside whatever stated above, an important aspect of the matter is that under the relevant regulations the General Manager is empowered to act as the disciplinary authority. Shri Shivanan Jappa was holding the post concerned, therefore, by the force of law he was to act as disciplinary authority. In such circumstances the doctrine of necessity demands to march over the natural justice to maintain the machinery of administration and adjudication.

The next contention of counsel for the petitioner is that the order of disciplinary authority deserves to be quashed being a non speaking and unreasoned, is also having no merit. The order passed by the disciplinary authority is in concurrence to the findings given by the inquiry officer and, therefore, in view of the law laid down by Hon'ble Supreme Court

in the case of Ram Kumar v. State of Haryana [1987 (supple.) SCC 582], the non existence of the reasons does not make it bad.

I also do not find any force in the contention of counsel for the petitioner that non supply of the report of the inquiry officer amounts to violation of principles of natural justice and that vitiates the entire domestic inquiry. Counsel for the petitioner utterly failed to satisfy me as to how the non supply of the preliminary inquiry report has caused any prejudice to the workman's defence. The purpose of holding preliminary inquiry is just to get satisfied as to whether a prima facie case exists to frame definite charges of misconduct and to take disciplinary action against the employee. In the instant matter after holding the preliminary inquiry definite charges were framed and the prosecution nowhere placed reliance on preliminary inquiry report to substantiate those charges, therefore, there was no need to supply the copy of it to the workman.

In view of whatever discussed above, the writ petition preferred by the workman (SBCWP No.727/1996) is having no merit.

The contention of counsel for the employer is that the Labour Court erred while modifying the penalty imposed by the disciplinary authority just on

compassionate and sympathetic considerations. According to counsel for the employer there was no justification for modification of the penalty by exercising powers under Section 11-A of the Act of 1947.

Under Section 11-A of the Act of 1947 a discretion is vested with Labour Court in interfering with quantum of punishment awarded by the disciplinary authority where the workman is found guilty of misconduct. Such a discretion can be exercised if the punishment is shockingly disproportionate to the gravity of misconduct so as to disturb the conscience of the Court. In the instant matter the volatile attitude of the workman qua his colleagues and higher officials is proved beyond any shadow of doubt. Such type of conduct adversely effects administrative and functional order of an establishment. The indiscipline to the extent for which the workman is found guilty deserves to be dealt with seriously.

Learned Labour Court has modified the punishment imposed by the disciplinary authority on compassionate and sympathetic consideration which according to me are not relevant. There is nothing on record on basis of which an opinion can be formed that punishment awarded was shockingly disproportionate to the charge proved. Learned Labour Court, therefore, exercised the discretion vested with it erroneously.

In view of it the writ petition preferred by the employer deserves acceptance.

In result, the writ petition No.727/1996 preferred by the workman is dismissed. The writ petition No.1380/1995 preferred by the employer is allowed. The award impugned dated 14.12.1994 is modified to the extent it substitutes the penalty of discharge by withholding of two annual grade increments with cumulative effect. The order given by the Labour Court to reinstate the workman in service with 50% of back wages and wages for the period of suspension is quashed.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.